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Commissioner

July 28, 2006

To: All Licensed Child Care Providers

From: Deborah Neill, Director of Adult, Child & Community Programs

Cc: Judy Smith, Director of Child Care Planning & Development
Anne F. Turner, Director of Licensing
Paul Lefkowitz, Director of Child Care Certificate Program
Steve Neece, Director of Child & Adult Care Food Program

Re: Requirement to Cooperate With Monitoring & Evaluation

I am writing to remind you about the requirement that all child care providers who are licensed by the Department of Human Services ("DHS"), who participate in the Child Care Certificate ("Certificate"), or who participate in the Child and Adult Care Food Program ("CACFP") fully cooperate with the licensure monitoring and evaluation process. I am also writing to explain the types of actions that DHS will consider to be noncooperation in violation of these requirements.

The Legal Requirement to Cooperate: State law, at T.C.A. §71-3-508, requires DHS to inspect all child care agencies for compliance with the licensing law and regulations, and gives DHS the authority, *at any time during operating hours*:

- To inspect the facility and all agency records,
- to observe the children enrolled and in attendance at the agency,
- to observe the agency staff, and
- to otherwise inspect any information relevant to licensing law.

In addition, state law at T.C.A. §71-3-502 requires all agencies licensed by DHS (as part of the process for determining if a license will be renewed) to annually undergo a report card evaluation. Child care providers must therefore allow access by DHS to monitor the provider's program and to perform the program assessment for the mandatory report card evaluation. For agencies that participate in the Certificate program or CACFP, this requirement additionally includes allowing immediate access to all records and other information relevant to participation in those programs.

This law also grants DHS the authority to determine both the identity and the number of DHS staff who are assigned to perform DHS' duties under these laws. Thus, a child care agency may not refuse access to, or otherwise unreasonably fail to cooperate with, the DHS staff assigned to monitor or assess the agency – *the provider is required by law to cooperate with whomever DHS has assigned to the task*.

Acts That DHS Will Consider To Be a Violation: The acts that DHS will consider to be a "refusal to allow access", a "refusal or unreasonable failure to cooperate" or an "interference with the monitoring and evaluation process" that violates the requirement to cooperate include:

- The provider refuses to allow monitoring or evaluation by a particular DHS staff member, attempts to allow access by some DHS staff but refuses to cooperate with other DHS staff members, or the provider attempts to place a limit on the number of DHS staff who can monitor or evaluate the program;

- The provider refuses to allow or interferes with DHS staff who attempt to observe children at the agency, who attempt to observe the agency program, or who attempt to observe the agency staff;
- The provider refuses to allow, or unreasonably fails to immediately provide, any records or other information that DHS needs for us to complete the monitoring or evaluation process;
- The provider intentionally, or through gross negligence, fails to maintain accurate information or submits inaccurate information regarding their participation in, or their payments from, the Certificate or CACFP programs;
- The provider refuses to schedule an assessment or an announced licensing evaluation, unreasonably fails to agree upon a scheduling date, or unreasonably or repeatedly requests to reschedule;
- The provider unreasonably fails to cooperate with or interferes with the monitoring/evaluation process by allowing the presence of 3rd parties who interfere with the timely commencement or the completion of the monitoring/evaluation process; and/or
- The provider unreasonably fails to be prepared for or otherwise cooperate with the assessment process; for example the provider:
 - fails to have appropriate staff & paperwork available,
 - refuses or fails to participate in the random classroom draw;
 - attempts to manipulate the assessment program's "typical day" policy through actions such as significantly changing the program materials used on the day of the assessment, reassigning staff for the day of the assessment, preventing enrolled children from attending or changing the grouping of children for the day of the assessment, etc.; or
 - fails to take any other actions needed to timely begin or appropriately complete the assessment process.

Consequences of Violating The Requirement to Cooperate: Any provider found to have failed to allow access or refused to allow access, or to have refused or unreasonably failed to cooperate with, or who has interfered with, or directed or permitted another to interfere with, any DHS staff member regarding program compliance or evaluation will be cited for violations of Licensing regulations and will be reviewed for possible legal enforcement actions. These legal enforcement actions can include:

- a court order requiring immediate access to the facility and all relevant records,
- probation,
- civil penalties,
- the immediate suspension of all or part of the agency's license,
- revocation of the current license, and/or
- denial of the application for a renewal license.

In *addition* to these legal enforcement actions such violations can result in:

- For non-cooperation with the assigned Assessor(s) or the assessment process, a rescheduled assessment which will be unannounced, with a Licensing Program Evaluator or Supervisor accompanying the Assessor(s) to insure compliance; or, if DHS chooses not to reschedule the assessment, such violations may result in DHS *automatically assigning the agency a Program Assessment score of "0"*.
- For noncooperation with assigned Certificate or CACFP staff or with the monitoring process, and also in any case in which manipulation of the assessment or evaluation process fraudulently impacts the provider's Star Quality bonus payments, such violations may result in monetary sanctions, disqualification from eligibility to participate in the program, and/or DHS referring the provider for criminal prosecution.

Accurate information for parents and safe, quality care for our children can only be insured if the integrity of the monitoring and evaluation processes is maintained. DHS has therefore directed our front-line monitoring and evaluation staff to consider noncooperation with these processes to be serious violations and we require that they refer such cases to DHS management for legal enforcement. In all cases in which we validate such violations DHS will pursue legal enforcement.

Finally, we recognize that the overwhelming majority of providers work very hard every day to obtain and maintain compliance, and our first goal is to prevent violations. We therefore encourage you, if you have any questions or concerns about the Licensing, Assessment, Certificate or CACFP programs or staff, to contact the local supervisor of the program. If you still have any questions or concerns after contacting your local supervisor we encourage you to contact the program's Program Supervisor or Director.